



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0708/2
EAW:ahe

2019 BILL

1 **AN ACT** *to renumber and amend* 767.41 (4) (a) 2.; and *to create* 767.001 (5m)
2 and 767.41 (4) (a) 2. a. to d. of the statutes; **relating to:** equalizing physical
3 placement.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on Child Placement and Support. Generally, the bill revises the standard that applies in determining or revising a physical placement schedule to require a court to set a substantially equal physical placement schedule, modified as appropriate in each case, and to allow a court to order a non-shared physical placement schedule in only limited, identified circumstances.

Under current law, a court must set a physical placement schedule that allows a child to have regularly occurring, meaningful periods of physical placement and that maximizes the amount of time for a child with each parent. The Wisconsin Supreme Court has stated that this standard does not require equal placement for a child with both parents. [Landwehr v. Landwehr, 2006 WI 64.] Also, in determining a physical placement schedule, a court must, in each case, consider a statutory list of best-interest factors.

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The bill removes that standard and specifies, in its place, that a court must set a substantially equal physical placement schedule, modified as appropriate after taking into account in each case the statutory best-interest factors.

The bill also specifies that a non-shared physical placement schedule may be ordered only if the schedule is in the best interest of the child and at least one of certain identified circumstances applies. The circumstances include when:

- A parent unreasonably refuses to cooperate with the other parent. In this circumstance, evidence of domestic or child abuse or interspousal battery creates a rebuttable presumption that the parents will not be able to cooperate.
- A parent does not wish to have an active role in raising the child.
- A parent is not capable of providing physical care for the child.
- Conditions exist that would interfere with exercising shared physical placement.

The bill defines “shared physical placement” as a court-ordered physical placement schedule under which both parents have periods of physical placement of at least 25%.

1 **SECTION 1.** 767.001 (5m) of the statutes is created to read:

2 767.001 (5m) “Shared physical placement” means a court-ordered placement
3 schedule under which both parents have periods of physical placement of at least 25
4 percent.

5 **SECTION 2.** 767.41 (4) (a) 2. of the statutes is renumbered 767.41 (4) (a) 2.
6 (intro.) and amended to read:

7 767.41 (4) (a) 2. (intro.) ~~In determining the allocation of periods of physical~~
8 ~~placement, the court shall consider each case on the basis of the factors in sub. (5)~~
9 ~~(am), subject to sub. (5) (bm). The Subject to sub. (5) (bm), the court shall set a shared~~
10 physical placement schedule ~~that allows the child to have regularly occurring,~~
11 meaningful with substantially equal periods of physical placement with each parent
12 ~~and that maximizes the amount of time the child may spend with each parent, taking~~
13 ~~into account geographic separation and accommodations for different households,~~
14 modified as appropriate considering the factors under sub. (5) (am). The court may
15 not grant physical placement of less than 25 percent to one parent unless the court
16 finds it is in the best interest of the child and one of the following applies:

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1 **SECTION 3.** 767.41 (4) (a) 2. a. to d. of the statutes are created to read:

2 767.41 (4) (a) 2. a. One party unreasonably refuses to cooperate with the other
3 party. Evidence that either party engaged in abuse of the child, as defined in s.
4 813.122 (1) (a), or evidence of interspousal battery, as described under s. 940.19 or
5 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), creates a rebuttable
6 presumption that the parties will not be able to cooperate in a shared physical
7 placement schedule.

8 b. One party does not wish to have an active role in raising the child.

9 c. One party is not capable of providing physical care for the child.

10 d. One or more conditions exist that would interfere with shared physical
11 placement.

12

(END)